IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 970 OF 2001

Morarjee Gokuldas spg. & Wvg. Co. Ltd. ..... Petitioner
vs.

1. Shri Chandrakant Dhopate
2. Shri P.C. Rathod,
   IIIrd Labour Court.
3. Smt. S.V. Ayerekar
   Member, Industrial Court. ... Respondents

Mr. Shirish Naik for petitioner
Mr. Jaiprakash Sawant for respondent no.1.

CORAM: D. G. KARNIK **J.**

DATE:6/6/2006

ORAL JUDGMENT:

1. By this petition the petitioner company challenges the judgment and order dated 12th December 2000 passed by the Industrial Court, Mumbai, dismissing its revision application against the order of the Labour Court.

2. Respondent no.1 (for that the respondent) was employed initially as a clerk by the petitioner company by a letter dated 22nd December 1971. The respondent was made permanent as a

punch operator in the E.D.P. Department on 12th June 1972. The respondent was then promoted as an Input Output officer on 1st July 1986. On 15th February, 1995 the petitioner terminated services of the respondent. The respondent challenged the termination of his service as an unfair labour practice falling under item 1 of schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act"). The petitioner resisted the complaint made by the respondent of unfair labour practice under item 1 of schedule IV of the MRTU & PULP Act. The petitioner firstly contended that the respondent was not a workman. His wages were more than Rs.5000/- per month. He was working in a supervisory capacity and therefore he was not an employee under section 3(13) of Bombay Industrial Relations Act, not a workman under the MRTU & PULP Act and consequently the complaint was not maintainable and the Labour Court had no jurisdiction to entertain and try the complaint. On merits, the petitioner admitted that no show cause notice was issued to the respondent. It also did not dispute that no chargesheet was issued and no enquiry was held

before the termination of the services of the respondent. It, however, contended that the petitioner company had adopted modern techniques of data processing and the respondent was unable to cope up with the new techniques and his work was not satisfactory and therefore his services were terminated.

3. In view of the preliminary objection raised by the petitioner to its jurisdiction the Labour Court framed a preliminary issue as to whether the respondent was a workman under the MRTU & PULP Act. The parties adduced evidence on the preliminary issue. The respondent examined himself and was cross examined by the petitioner. The petitioner also examined one witness and he was cross examined by the respondent. After taking into consideration the evidence adduced by the parties, by an order dated 15th January 1997 the Labour Court answered the preliminary issue in favour of the respondent and held that he was a workman within the meaning of the MRTU & PULP Act. Thereafter the matter was listed on 24th January 1997 and was adjourned to 27th January 1997. The respondent filed a pursis stating that he did not wish to adduce any further evidence than

what was adduced by him at the time of hearing of the preliminary issue. The petitioner's advocate filed an application for permission to cross examine the respondent further. That application was rejected. No further evidence was adduced by the respondent also. After consideration of the evidence which was already adduced before it, the Labour Court came to the conclusion that the petitioner had indulged in an unfair labour practice, falling under item 1 of schedule IV of the MRTU & PULP Act, by terminating the services of the respondent without enquiry and in colourable exercise of the petitioner's alleged contractual rights as an employer. In this view of the mater the Labour Court allowed the complaint and directed reinstatement of the respondent.

4. Aggrieved by the order of the Labour Court the petitioner filed a revision under Section 44 of the MRTU & PULP Act before the Industrial Court. By its order dated 12th December 2000 the Industrial Court dismissed the revision. That order is impugned in this petition.

5. Learned counsel for the petitioner submitted that the Labour Court erred in not giving an opportunity to the petitioner to again cross examine the respondent further after the decision on the preliminary issue. He submitted that this has resulted into denial of opportunity to defend resulting in miscarriage of justice. He therefore submitted that the revisional court ought to have intervened and set aside the order of the Labour Court.

6. No doubt, in the ordinary course a party would have a second opportunity of further cross examination of the witnesses, when the matter is heard finally after a decision on the preliminary issue. When a matter is heard on the preliminary issue, it is possible that a party may restrict the cross examination to the matter in controversy at that stage viz the controversy covered by the preliminary issue. However, in the peculiar facts and circumstances of the case I am satisfied that denial of the opportunity to further cross examine the respondent, after decision on the preliminary issue, has not resulted in any injustice. The principal and perhaps the only defence of the petitioner was that the respondent was employed in a

supervisory capacity drawing salary of more than Rs.5000/- and was not a workman. The respondent had specifically set out in his pleadings that his services were terminated without any enquiry or a show cause notice nor a chargesheet was ever issued to him; no enquiry was ever held. This was not denied by the petitioner. Therefore once it was held that the Respondent was a workman there was no further defence raised by the Petitioner requiring further evidence. In these peculiar facts and circumstances the Industrial Court came to the conclusion that no prejudice has been caused to the petitioner by denial of the opportunity of further cross – examining the respondent. I am in agreement of the view taken by the Industrial Court.

7. There is one more reason why I am not inclined to interfere in this case, in exercise of writ jurisdiction. At the time of admitting the petition this court noted that the petitioner had no personal grievance against the respondent and directed the petitioner to re-employ the respondent no.1 in the same post with effect from 3rd May 2001. Counsel for the parties state that

accordingly the respondents was taken back in employment and attaining the age of superannuation has retired on 1st March 2006. Learned counsel for the Petitioner further states that full salary of the respondent has been paid. In view of these peculiar facts and circumstances it would not be proper to set aside the impugned order and order a remand. No useful purpose would be served by such an order.

8. For the reasons stated above the petition is dismissed. Rule is discharged with no order as to costs.

Certified copy is expedited.

(D. G. KARNIK **J**)

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Mr. Jaiprakash Sawant for respondent no.1.

CORAM: D. G. KARNIK **J.**

DATE:6/6/2006

For the reasons separately recorded the following order is passed:

For the reasons stated above the petition is dismissed. Rule is discharged with no order as to costs.

Certified copy is expedited.